

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN BROWN

Claimant

VS.

UTILITY CONTRACTORS, INC.

Respondent

AND

ST. PAUL FIRE & MARINE INSURANCE COMPANY

Insurance Carrier

Docket No. 237,848

ORDER

Respondent appealed the December 1, 1998, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge found claimant suffered a work-related low back injury on July 29, 1998, while employed by the respondent. The Administrative Law Judge ordered respondent to pay the medical expenses as authorized, appointed orthopedic surgeon Ely Bartal, M.D., as claimant's treating physician, and ordered the payment of temporary total disability compensation from October 20, 1998, until November 12, 1998.

Respondent appealed and contends the claimant failed to prove his low back injury was related to his employment with respondent.

That is the single issue before the Appeals Board for review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, the Appeals Board finds as follows:

The issue raised by respondent is a jurisdictional issue listed in K.S.A. 1998 Supp. 44-534a that subjects a preliminary hearing order to Appeals Board review.

No briefs were filed by either party. Therefore, the Appeals Board has only the transcript of the proceedings to ascertain on what basis the respondent contended claimant's low back injury had not occurred while he was working for the respondent. At the completion of the preliminary hearing, respondent's attorney first argued that there was no medical opinion contained in the record that claimant's need for low back surgery was the result of a work-related accident. Second, he argued since claimant made a trip to Alabama and returned, only

15 days after his hernia surgery, if claimant had an injured back he would have been unable to make such a trip.

Claimant testified he injured his low back and suffered a right inguinal hernia while working for respondent on July 29, 1998. Respondent voluntarily provided medical treatment for the repair of the right inguinal hernia but denied claimant had also sustained a work-related low back injury.

Claimant had a preexisting low back injury in 1986 which required surgical intervention with internal fixation of screws and two Harrington rods. This spinal hardware was found to be the cause of claimant's current low back pain and was surgically removed on October 21, 1998.

The Appeals Board finds the record at this point in the proceedings supports the Administrative Law Judge's conclusion that claimant, in addition to his hernia injury, also permanently aggravated his preexisting low back condition at work on July 29, 1998, which required surgical intervention. This conclusion is supported by claimant's testimony that, in addition to the pain and discomfort he had at work on July 29, 1998, in his right groin area, he also had pain and discomfort in his low back. The contemporaneous medical record of Mitzi M. Bales, M.D., dated August 3, 1998, indicates claimant complained of low back pain as well as discomfort and a bulge in his right groin area when he first sought medical treatment. Dr. Bales diagnosed low back pain and right inguinal hernia.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's preliminary hearing Order dated December 1, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: W. Walter Craig, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director